

# Medicaid Compliant Annuities Can Now Be Used as a Planning Technique

CTNAELA: News: News: Medicaid Compliant Annuities Can Now Be Used as a Planning Technique

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## CT NAELA SUPPORTS LITIGATION WHICH HELPS OUR ELDERLY CLIENTS

On August 13, 2010, U.S. District Court Judge Janet C. Hall ruled in *Lopes v. Starkowski*, that the spouse of a Connecticut nursing home resident did not need to sell an annuity she had purchased so that her husband could qualify for Medicaid coverage.

Attorneys Brendan F. Daly and Paul T. Czepiga argued the case on behalf of the Plaintiff with the support of the Connecticut Chapter of the National Academy of Elder Law Attorneys (CT NAELA) and NAELA Member Attorney Rene H. Reixach.

The institutionalized spouse, Mr. Lopes, has been confined to a nursing home since November 2008. Mr. and Mrs. Lopes had \$166,000 more of countable assets than were permitted by Medicaid law. In order to qualify her husband for Medicaid, Mrs. Lopes purchased a single premium immediate annuity for \$166,000 to provide her with a fixed monthly income that is exempt under Federal Medicaid law. That annuity purchase also reduced Mrs. Lopes' countable assets to less than the Medicaid asset threshold for a married couple.

The state of Connecticut contended that Mrs. Lopes should sell the annuity's income stream for a lump sum, even though such a sale would have netted only about \$98,000 and even though the annuity was non-assignable and irrevocable. It was the State's position that if the annuity income could be sold, even at a loss, Mrs. Lopes would exceed the Medicaid asset limit and her husband would not, consequently, be eligible for Medicaid.

Mrs. Lopes contended that federal law exempts her annuity's fixed income in determining her husband's eligibility for Medicaid benefits. In other words, what had been \$166,000 of countable assets was, through the purchase of an immediate payout annuity that complied with federal Medicaid rules, converted to exempt income for Mrs. Lopes' sole benefit.

Judge Hall ruled as unconstitutional Connecticut's policy of trying to force a healthy spouse (whose husband or wife is in a nursing home) to sell the income stream produced by the healthy spouse's annuity. Since the State did not appeal, the decision stands and immediate annuities are now viable planning techniques in Connecticut.

[Read the Judge Hall's Decision \(Adobe PDF\)](#)